

ANNEXATION AGREEMENT

Lot 1, Puritan Annexation

THIS AGREEMENT is made and entered into this ____ day of _____, by and between Nicolae Toderica, hereinafter referred to as the "ANNEXOR," and the Town of Frederick, a municipal corporation of the State of Colorado, hereinafter referred to as "Frederick" or "TOWN".

WITNESSETH:

WHEREAS, the ANNEXOR desires to annex to the Town of Frederick the property more particularly described on Exhibit "A," which is attached hereto, incorporated herein, and made a part hereof, hereinafter referred to as "PROPERTY" or "the PROPERTY"; and

WHEREAS, the TOWN wishes to control its growth in a planned and orderly fashion, maintaining and improving quality of life and the TOWN's ability to provide and enhance environmental amenities, services and local opportunity for its citizens; and,

WHEREAS, the ANNEXOR wishes to develop the PROPERTY for uses compatible with its objectives and those of TOWN; and

WHEREAS, the ANNEXOR acknowledges that upon annexation, the PROPERTY will be subject to all ordinances, resolutions, and other regulations of the Town of Frederick, as they may be amended from time to time; and

WHEREAS, the parties mutually recognize and agree that it is necessary and desirable for orderly development that the TOWN be the source of necessary urban services for property to be developed, such as police protection, and local government administration; and

WHEREAS, the parties agree that it is in the public interest of the parties hereto to enter into a written agreement as to the overall plan of development, including location and dedication of public ways and public areas, zoning, dedication of water rights and location and payment regarding roads, utilities and other improvements; and

WHEREAS, the ANNEXOR acknowledges that the need for conveyances and dedication of certain property, including but not limited to property for streets, rights-of-way and easements, parks and open space, utility facilities and other public improvements, to the TOWN as contemplated in this AGREEMENT are directly related to and generated by the development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation;

NOW, THEREFORE, in consideration of the foregoing covenants, promises and agreements of each of the parties hereto, to be kept and performed by each of them, it is agreed by and between the parties as follows:

1. **BASIC INTENT.** The intent of this AGREEMENT is to set forth the basic requirements for annexation and development of the PROPERTY described above. This AGREEMENT shall be binding upon the parties and may not be modified except by further written agreement.
2. **DEVELOPMENT.** The PROPERTY annexed shall be developed in general conformity with the TOWN comprehensive plans, subdivision regulations, zoning code, building codes and other applicable statutory and local requirements, including without limitation, those pertaining to subdivision, land use, streets, storm drainage, utilities, landscaping, parks and open spaces and flood control. The TOWN and the ANNEXOR further agree that the TOWN

may amend the TOWN'S comprehensive plans, subdivision regulations, zoning code, building codes and other applicable statutory and local requirements from time to time as needed to address changing effects upon the TOWN'S infrastructure, administration, and delivery of governmental services as a result of development occurring with the TOWN. The TOWN and the ANNEXOR agree that such plans, regulations, codes and other statutory and local requirements are directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.

- a. **Zoning.** The ANNEXOR desires C-H52 Mixed Use Commercial Highway 52 District zoning, in accordance with the zoning categories contained in Article 3 of the **Frederick Land Use Code**. The parties recognize that it is the intent and desire of the ANNEXOR to develop the PROPERTY in a manner generally consistent with the zoning requested and that the granting of such zoning by the Town of Frederick is a condition to annex the PROPERTY.
 - b. **Land Use.** All residential, commercial and industrial construction will be subject to the types and intensities of land use permitted pursuant to the **Frederick Land Use Code** in effect on the date hereof, or in effect on the date when building permit applications are filed.
 - c. **Master Development Plan.** The TOWN and the ANNEXOR recognize that property development is subject to market conditions. To assure the TOWN that the development of the PROPERTY proceeds in an orderly manner, the ANNEXOR may phase the development and develop in phases submitted to the Town as "Filings". If phased development is utilized, a "preliminary plat" for the entirety of the PROPERTY shall be provided. For each development phase, a "final subdivision plat" labeled as "Filing No.____" will be submitted to the Frederick Planning Commission and the Board of Trustees for review and approval. Each "final subdivision plat" shall be in general conformance with the "preliminary plat" for the entire PROPERTY, as approved and/or amended by the Board of Trustees.
3. **MUNICIPAL SERVICES.** The TOWN agrees to provide the PROPERTY with all of the usual municipal services in accordance with this agreement, and the ordinances and policies of the TOWN, which services shall include, but are not limited to, general government administration, police protection, and all other services customarily and currently provided by the TOWN in the area to be annexed. The ANNEXOR acknowledges, agrees and accepts that the TOWN may not currently be providing electricity, water, sewer natural gas services or fire protection services to the area to be annexed. The TOWN and the ANNEXOR agree that the provision or non-provision of such municipal services by the TOWN or by another entity is directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.
- a. The parties agree that the provision of municipal services in outlying areas is not always economically feasible. Therefore, the TOWN agrees to allow and to assist the ANNEXOR in obtaining service from other entities in such outlying areas. Such non-municipal entities including, but are not limited to, United Power, Source Gas, St Vrain Sanitation District, and Left Hand Water District.
 - b. The ANNEXOR agrees to petition for inclusion of the PROPERTY into the St. Vrain Sanitation District, Frederick Firestone Area Fire Protection District, Left Hand Water District, Northern Colorado Water Conservancy District, St. Vrain Valley School District RE1J and the Carbon Valley Recreation District within thirty (30) days of the

effective date of the annexation, if the PROPERTY is not already included within said districts. The ANNEXOR appoints the Town Clerk as its agent for the purpose of petitioning for inclusion into said special districts, in the event the ANNEXOR fails to do so, and to pay all costs associated therewith.

- c. Nothing in this Agreement shall provide the ANNEXOR with priority for utility, public safety, and other public services by the TOWN or other non-municipal entity. If utility, public safety, or other public services are not available to coordinate with the ANNEXOR's development schedule, the ANNEXOR shall either delay development until funding becomes available, or fully advance funds necessary to accelerate their availability and priority, according to the TOWN's policies and regulations, and the provisions of this Agreement.

4. PUBLIC IMPROVEMENTS. The ANNEXOR agrees to design, construct and install at his sole cost and expense, in accordance with the TOWN reviewed and accepted plans, all public improvements within or adjacent to the PROPERTY and serving the PROPERTY including but not limited to water distribution, sewage collection, gas service, electric service, street and trail lighting, streets, curb, gutter, sidewalks, storm sewer lines, storm drainage improvements, fire hydrants, pedestrian and non-motorized trails, street median/boulevard and subdivision entryway landscaping and park improvements. All the above described public improvements shall be constructed to the Town standards, or where applicable, to the standards of the utility providing the service. All power supply and distribution lines for utilities will be placed underground.

- a. All public and private roads shall be constructed to the TOWN standards. Trails shall be constructed as an integral feature of the development, in accordance with TOWN construction standards. All public roads, trails and right-of-ways shall be dedicated to the TOWN. The TOWN will install, at the ANNEXOR's expense, street name signs, striping, stop signs, speed limit and other signs on all streets, in accordance with the Model Traffic Code, and the TOWN's Design Standards and Construction Specifications, as from time to time amended, and other applicable legal requirements.
- b. Lights along streets and trails shall be installed in accordance with plans reviewed and accepted by the electric service provider and the TOWN. The type of light shall be chosen by the TOWN.
- c. Utilities and streets shall be sized to provide for development of the PROPERTY and to accommodate the development of adjacent property. ANNEXOR may be required to oversize utilities and construct off-site improvements to utilities and transportation infrastructure benefiting the PROPERTY or to accommodate future development within the area. Said oversizing of utilities and off-site improvements to utilities and transportation infrastructure may be eligible for reimbursement by the TOWN, future developers, or users of the facilities. Any reimbursements to the ANNEXOR will be subject to a separate Memorandum of Agreement for Public Improvements, hereinafter called the "MOAPI."
- d. The ANNEXOR agrees to provide to the TOWN, a two (2) year guarantee, from the time of conditional acceptance of construction, for all improvements. If requested by the TOWN, the ANNEXOR agrees to dedicate to the TOWN any or all required improvements.

- e. The ANNEXOR agrees to enter into a MOAPI pertaining to such improvements and other matters prior to any development of the PROPERTY. The construction of public improvements shall be subject to any reimbursement which may be provided for in the MOAPI.
 - f. The ANNEXOR agrees to pay the full cost of relocating existing utilities that may be required by the development of the PROPERTY. All existing overhead utilities within the PROPERTY or in road right-of-ways adjacent to the PROPERTY, including but not limited to electric or telecommunications lines and cables shall be relocated underground. Facilities designed for the transmission or distribution of electric energy at voltages greater than 15,000 volts shall be exempt from this requirement.
 - g. If the ANNEXOR cannot acquire an off-site easement or rights-of-way necessary to develop the PROPERTY, the ANNEXOR may request the TOWN's assistance in acquiring the easements or rights-of-way. Such assistance by the TOWN shall be in compliance with Colorado law authorizing the TOWN's use of eminent domain. The ANNEXOR shall advance to the TOWN all acquisition costs, including any court costs and attorneys' fees, the TOWN may incur in providing assistance.
 - h. The ANNEXOR agrees to design, construct and install neighborhood parks at his sole cost and expense, in accordance with a landscaping and park development plan approved by the TOWN, to be included as part of any subdivision final plat.
5. **WATER RIGHTS.** It is agreed by the parties that the property will receive domestic potable water service from the Left Hand Water District, and not from the TOWN. Therefore water rights pursuant to §13-43 and 13-44 of the **Frederick Municipal Code** will not be required to be dedicated to the TOWN; except, that at the sole discretion the Town, water rights acceptable to the Town or cash-in-lieu thereof, may be required to be dedicated to the Town for the irrigation of any lands dedicated for public use or open space within the area to be annexed, along with the dedication of all "non-tributary" and "not non-tributary" groundwater appurtenant to the land being annexed. Transfer of said water rights is to be by warranty deed acceptable to the Town Attorney, free and clear of all liens and encumbrances, and shall be accomplished prior to the approval of the first building permit in a final plat for the land annexed.

At the sole and absolute discretion of the Board of Trustees, water rights for a phased project may be provided in proportion to the number of SFE's being developed in each phase. Transfer of the water rights required for each phase shall take place with the issuance of the first building permit for that phase. Notwithstanding the afore described allowance for phased dedication, the non-tributary and "not non-tributary" water rights and water rights for irrigation of all park and open space lands within the area being subdivided shall be transferred prior to approval of the first building permit in any phase of the final plat and no phase may contain less than six (6) SFE's.

The sufficiency and acceptability of all non-CBT water rights to be dedicated to the Town shall be determined on a case-by-case basis, at the sole and absolute discretion of the Board of Trustees. In lieu of the water rights required in this section 5, at the sole and absolute discretion of the Board of Trustees, the ANNEXOR may be required to pay cash-in-lieu at a the current rate established by the Town at the time the water rights would otherwise be due.

6. **LAND DEDICATION.** The dedication of public easements for utilities, rights-of-way for streets and other public ways shall be by plat dedication or deed of dedication at the Town's discretion. Dedications for parks and open space and other public purposes shall be by General or Special Warranty Deed or appropriate instrument of conveyance acceptable to the TOWN. Such dedications and transfer of ownership shall occur immediately upon request of the TOWN, except that internal rights-of-way shall be dedicated at the time of subdivision platting, unless the TOWN specifies another time. The suitability and acceptance of any land proposed to be dedicated to the TOWN shall be at the sole discretion of the TOWN. The TOWN and the ANNEXOR agree that such dedications are directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.

- a. **Parks and Open Space.** The ANNEXOR agrees to dedicate to the Town of Frederick, twelve (12%) percent of the total acreage of the PROPERTY as public land at the time of annexation, or pay an equivalent "cash in lieu" to the TOWN based on the undeveloped price of such land, or any combination of land and cash as is negotiated and agreed upon by the ANNEXOR and the TOWN. The value of the land is based upon an appraisal by a competent, independent appraiser selected by the TOWN and the ANNEXOR, or upon value negotiated between the TOWN and the ANNEXOR. The suitability of the land to be dedicated for public purposes and the credit to be given toward the land dedication requirement is at the TOWN's sole option and discretion. The dedication of land or cash in lieu is at the TOWN's sole option and discretion.

Additional parks and open space land shall be dedicated upon the approval of a final plat for the property, the amount to be in conformity with the requirements of the ***Frederick Land Use Code***.

The ANNEXOR agrees to provide a landscaping and development plan meeting TOWN specifications for dedicated public land. Provisions for the construction and development of the public land in accordance with the accepted plans are to be included in the MOAPI as part of any subdivision final plat approval.

- b. **Roads and Utility Easements.** The ANNEXOR shall dedicate right-of-way for all roads and utility easements to the TOWN. All utility easements, dedicated to the TOWN, shall be for the use and the benefit of the various entities furnishing utility services, i.e., electrical, telephone, gas, TV cable, water, sewer and storm sewer. Utility easements for all utilities may be within the road or trails right-of-way and may be identical or overlapping. All power supply and distribution lines for utilities will be placed underground. The Town will not accept a dedication of a half right-of-way along the perimeter of a property. The right-of-way provided shall be sufficient to allow the construction and operation of a fully functional road as determined by the Town to be necessary to serve the proposed development and adjacent property.
- c. **Fair Contribution for Public School Sites.** In lieu of land dedication for public school sites, the TOWN shall assess on behalf of the St. Vrain Valley School District RE 1-J, the appropriate fee per residential unit as designated in Section 2.15 of the

Frederick Land Use Code. Payment of the fee shall be due at the time of issuance of a building permit by the TOWN for each residential unit. The TOWN and the ANNEXOR agree that such payments are directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.

7. **WATER SERVICE.** It is agreed by the parties that the property will receive domestic water service from the Left Hand Water District, and not from the TOWN. The ANNEXOR shall comply at the time of development with the District's requirements. The TOWN does not warrant the availability of water service by the Left Hand Water District to the ANNEXOR for any phase of development. The TOWN shall require proof of purchase of a water tap for the building site before a building permit will be issued for the site. If the PROPERTY is not already in the Northern Colorado Water Conservancy District, the ANNEXOR agrees to petition for inclusion in said District and to the payment of any fees and taxes levied by the District as a condition of said inclusion.
8. **SANITARY SEWER SERVICES.** Sanitary sewer service to the PROPERTY will be provided by Saint Vrain Sanitation District, and not by the TOWN. The ANNEXOR shall comply at the time of development with the District's requirements for extension of service to the property and for the payment of sanitary sewer tap and plant investment fees. The TOWN does not warrant the availability and capacity of sewer service by the St. Vrain Sanitation District to the ANNEXOR for any phase of development.
9. **ELECTRIC SERVICES.**
 - a. **Provision of Electric Service.** The parties agree that the SUBDIVISION will receive electric service from the TOWN. The ANNEXOR shall comply at the time of development with the TOWN's requirements for the extension of main feeder lines, internal subdivision distribution systems, service connections and the payment of any system capital investment fees required by the TOWN at the time that the ANNEXOR requests electric service. All electric facilities serving the SUBDIVISION shall be owned by the TOWN.
 - b. **Electric Service Availability.** The TOWN does not warrant the availability of electric service to the ANNEXOR for any phase of development. A determination of electric service availability by the TOWN shall be made by an electric system analysis at the time the ANNEXOR requests electric service. In the event that the TOWN determines that it has insufficient electric service capacity, The TOWN shall issue no electric service connections until there is electric service capacity available.
 - c. **Extension of Electric Services.**
 1. The TOWN shall install at the ANNEXOR's sole cost and expense, all the electric main feeder lines and appurtenances necessary to provide service from the TOWN's system to the PROPERTY. Extensions may include the oversizing of main feeder lines for future development of adjacent property.
 2. The TOWN shall install at the DEVELOPER's sole cost and expense, all the electric distribution system and appurtenances within the PROPERTY.
 3. The ANNEXOR shall advance a refundable construction deposit to the

TOWN equal to the estimated total cost of the line extension and subdivision distribution system construction. Upon completion of the construction of the line extension and distribution system, the construction deposit shall be compared to the actual cost of said construction. If the actual cost of said construction is less than the construction deposit originally estimated, the TOWN shall thereupon refund the difference to the DEVELOPER. If the actual cost of said construction is greater than the construction deposit originally estimated, the DEVELOPER shall reimburse the TOWN the difference. All line extensions and subdivision distribution system construction shall be dedicated to the Town after construction.

4. Any reimbursements to the ANNEXOR for oversizing of main feeder lines and other electric facilities will be as specified in the MOAPI.

- d. **Electric Service Connection, Electric Capital Improvement and Main Feeder Capital Investment Fees.** Electric service connection, electric capital improvement and main feeder capital investment fees shall be the existing TOWN electric connection, electric capital improvement and main feeder capital investment fees at the time that the ANNEXOR requests electric service. Electric connection and electric capital improvement fees shall be paid when a building permit for a structure is requested from the TOWN. Main feeder capital investment fees shall be paid as part of the construction deposit required for line extension, subdivision distribution and service connection construction by the TOWN.

10. **DRAINAGE.** In conformance with the TOWN standards and specifications, the ANNEXOR shall make provisions to control all storm water runoff greater than that historically generated from the PROPERTY. The ANNEXOR shall not alter historic flows in a manner that would adversely affect upstream or downstream properties. The TOWN and the ANNEXOR agree that such drainage improvements are directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.

- a. **Drainage Plan.** The ANNEXOR, at his sole expense shall prepare a master drainage plan for the PROPERTY. The master drainage plan shall show the location and extent of all drainage system improvements, including but not limited to collection and detention facilities. If the master drainage plan results in changes to drainage or irrigation facilities affecting other property or facility owners, the TOWN may require the ANNEXOR to obtain written consent from each property or facility owner for the changes before the TOWN will accepted the plan. The ANNEXOR shall construct all improvements in an appropriate sequence to meet the demands that development of the PROPERTY generates. The ANNEXOR shall meet all TOWN standards and specifications in effect at the time of construction. The TOWN may require the ANNEXOR to update the master drainage plan for the PROPERTY for the review of each final plat to determine the configuration, timing, and responsibility for the improvements.

- b. **Drainage Improvements.** The master drainage plan, as reviewed and accepted by the TOWN, shall state the ANNEXOR's responsibility for on-site drainage improvements. The master drainage plan may include construction of facilities to convey, collect and detain irrigation and storm water. The master drainage plan shall also state the ANNEXOR's responsibility for off-site improvements. The MOAPI will

address these responsibilities in detail, including any proportionate reimbursements from adjacent and/or benefiting property owners or as stated in the Frederick Municipal Code then in effect.

- c. **Flood Plains.** If any portion of the PROPERTY lies within a floodplain, including unmapped flood plains, as defined by the Federal Emergency Management Agency (FEMA), the ANNEXORS are responsible for all the necessary design and submittal materials to FEMA for proposed changes to the floodplain designation. Any submittal to FEMA must be reviewed and accepted by the TOWN before submittal to FEMA.
 - d. **Maintenance of Drainage Facilities.** Detention ponds, private storm sewers, underdrains, and other drainage facilities will be owned and maintained by the ANNEXOR or a Homeowners' Association unless otherwise stated in the MOAPI.
11. **TRANSPORTATION FACILITIES.** The ANNEXOR shall provide the TOWN a traffic study in accordance with the criteria as specified by the TOWN at the time of submittal of preliminary plats, unless the TOWN waives the requirement. The TOWN and the ANNEXOR agree that such transportation improvements as depicted in the traffic study are directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.
- a. For full development of the PROPERTY to occur, the ANNEXOR may need to acquire certain off-site rights-of-way for the construction of off-site improvements, as identified in the accepted traffic study or future updates to the study. All acquisition costs of off-site rights-of-way necessary to serve the PROPERTY shall be the ANNEXOR's sole responsibility, subject to reimbursement as detailed in the MOAPI.
 - b. For full development of the PROPERTY to occur, certain on-site and off-site transportation improvements, as identified in the accepted traffic study, may be necessary. The ANNEXOR shall construct the improvements in a sequence acceptable to the TOWN to meet the demands that development of each phase of the PROPERTY will generate. The ANNEXOR shall follow all applicable provisions and standards of the **Frederick Municipal** Code and the TOWN's Design Standards and Construction Specifications, as from time to time amended, and other applicable legal requirements. The ANNEXOR agrees to construct or contribute to the construction of all on-site and off-site transportation improvements to accommodate needs that development of each phase of the PROPERTY will generate.
 - c. The ANNEXOR's construction of arterial street improvements, and arterial intersection improvements in excess of the cost of a collector street, excluding rights-of-way and site specific improvements, may be subject to reimbursement by the TOWN or adjacent benefited property as specified in the MOAPI.
 - d. The ANNEXOR is solely responsible for construction of all transportation improvements to accommodate development of the PROPERTY that do not directly benefit other properties. The TOWN will not provide for reimbursement to the ANNEXOR for these expenses.

12. **PARKS and OPEN SPACE IDENTIFIED IN THE *FREDERICK COMPREHENSIVE PLAN*.**

The ***Frederick Comprehensive Plan, 2006*** identifies parks and open space land within the planning area. Subject only to encumbrances acceptable to the TOWN, the ANNEXOR shall preserve, construct, develop and dedicate to the TOWN all parks and open space areas within, crossing or bordering the PROPERTY as depicted in the ***Frederick Comprehensive Plan, 2006*** at the time of platting the PROPERTY as the TOWN shall require.

13. **FIRE PROTECTION.** The ANNEXOR shall be solely responsible for installing all fire hydrants and other fire protection measures on the PROPERTY and its perimeter as may be required by the Frederick Firestone Fire Protection District.
14. **COST ALLOCATION AND RECAPTURE OF COSTS FOR PUBLIC AND COMMON IMPROVEMENTS.** The TOWN may require the ANNEXOR to pay for other public improvements that relate to development of the PROPERTY. These public improvements may benefit not only the PROPERTY, but also adjacent landowners and the public.
 - a. The TOWN may assure construction of public improvements by requiring the ANNEXOR to execute a MOAPI. The TOWN may require financial security by the ANNEXOR before development of all or any applicable phase of development.
 - b. Where the ANNEXOR constructs public improvements that will also benefit other property owners and the public, reimbursement to the ANNEXOR shall be according to the Frederick Municipal Code in effect at the time of development, and detailed in the ANNEXOR's MOAPI.
 - c. Where the ANNEXOR's property abuts or benefits from existing public improvements that have been constructed by others (including the TOWN), the ANNEXOR may be required to participate in those public improvements according to the Frederick Municipal Code in effect at the time of development and as detailed in the ANNEXOR's MOAPI.
15. **DEVELOPMENT IMPACT FEES.** The TOWN has established certain uniform development impact fees that directly address the effect of development intended to occur within the property upon the TOWN's infrastructure, administration and deliver of governmental services. The ANNEXOR agrees to the payment of these uniform development impact fees as established by the TOWN. The TOWN and the ANNEXOR further agree that the TOWN may amend the development impact fees from time to time as needed to address changing affects upon the TOWN's infrastructure, administration and deliver of governmental services as a result of development occurring within the TOWN. The development impact fees are to be paid at the then current rate upon subdivision of the property and/or the issuance of building permits. The TOWN and the ANNEXOR agree that the necessity of such development impact fees is directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.
16. **CONFORMANCE WITH TOWN REGULATIONS.** The ANNEXOR agrees that the design, improvement, construction, development, and use of the PROPERTY shall be in conformance with all TOWN ordinances and resolutions and the TOWN's "Standard Design Criteria and Standard Construction Requirements" including, without limitation, those pertaining to subdivision, zoning, streets, storm drainage, utilities, and flood control. The TOWN and ANNEXOR further agree that the TOWN may amend the TOWN'S "Standard Design Criteria and Standard Construction Requirements" from time to time as needed to

address changing effects upon the TOWN'S infrastructure, administration, and delivery of governmental services as a result of development occurring within the TOWN. The TOWN and ANNEXOR agree that the necessity of such TOWN regulation is directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.

17. **VESTED RIGHTS.** The TOWN and the ANNEXOR agree that only the Final Plat(s) of the PROPERTY, approved by the TOWN in accordance with Article 4 of the ***Frederick Land Use Code***, and amendments thereto, constitute a site specific development plan pursuant to C.R.S. § 24-68-101 et. seq., as amended, (the "Vested Rights Act") for that portion so platted, and in addition, that the rights which vest pursuant to the "Vested Rights Act" shall vest for a period of three (3) years.

Furthermore, ANNEXOR and TOWN agree that vesting shall only occur in the event that the ANNEXOR specifically requests the approval of the TOWN to designate the Final Plat as the "site specific development plan(s)" for the PROPERTY. Failure of the ANNEXOR to request such an approval renders the Final Plat not a "site specific development plan" and no vested rights shall be deemed to have been created.

The ANNEXOR and the TOWN agree that the need for the establishment of this process for the vesting of property rights are directly related to the TOWN's ability to control its growth in a planned and orderly fashion, and is generated by the development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.

18. **EXCLUSIVITY OF ANNEXATION PETITION.** The ANNEXOR agrees to not sign any other petition for annexation of the PROPERTY or any petition for an annexation election relating to the PROPERTY, except upon request of the TOWN.

19. **THREE-MILE ANNEXATION PLAN.** The ***Frederick Comprehensive Plan, 2006***, designated as the Frederick Three-Mile Annexation Plan, encompasses the entire PROPERTY. The ***Frederick Comprehensive Plan, 2006***, along with accompanying maps, plats, charts and descriptive material, has been adopted as the master plan for the three-mile area surrounding the Town of Frederick as required by C.R.S. § 31-12-105 (1) (e). This "Three Mile Annexation Plan" has been amended to the extent necessary to incorporate the above described PROPERTY and to update the Plan by the ordinance annexing the PROPERTY and complies with the requirements of C.R.S. § 31-12-105 (1)(e).

20. **DEVELOPMENT REQUIREMENTS AND EXACTIONS NOT A TAKINGS.** The TOWN and the ANNEXOR agree that in all instances the requirements and exactions contained in this agreement are directly related to and generated by the development intended to occur within the PROPERTY and that no takings thereby will occur requiring any compensation.

21. **OIL AND GAS DEVELOPMENT.**

- a. ANNEXOR agrees that in the development of the PROPERTY, the ANNEXOR will comply with the TOWN's regulations with regard to setbacks from existing wells and production facilities for lots, streets and buildings.
- b. ANNEXOR agrees to provide dedicated easements or outlots over oil and gas gathering lines or transmission lines, or to relocate existing oil and gas gathering

lines or transmission lines into dedicated easements or outlots during platting and development. Dedicated easements for oil and gas gathering lines or transmission lines shall not be located in or across residential lots, or within public street rights-of-way, and shall cross public streets only at right angles.

- c. All oil and gas access roads located on the PROPERTY will remain where they are until the platting of the PROPERTY, and shall be considered a maintenance obligation between the ANNEXOR and the oil and gas company(s). The TOWN shall not be responsible for any maintenance of any current oil and gas access road.

22. MISCELLANEOUS PROVISIONS.

- a. **Interpretation.** Nothing in this Agreement shall constitute or be interpreted as a repeal of the TOWN's ordinances or resolutions, or as a waiver of the TOWN's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the TOWN and its inhabitants, nor shall this Agreement prohibit the enactment or increase by the TOWN of any tax or fee.
- b. **Severability.** If any part, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Agreement. The parties hereby declare that they would have agreed to the Agreement including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.
- c. **Amendments to the Agreement.** This Agreement may be amended, at anytime, upon agreement of the parties hereto. Such amendments shall be in writing, shall be recorded with the County Clerk & Recorder of Weld County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the PROPERTY subject to the amendment unless otherwise specified in the amendment.

In addition, this Agreement may be amended by the TOWN and any ANNEXOR without the consent of any other ANNEXOR as long as such amendment affects only that ANNEXOR's portion of the PROPERTY. Such amendments shall be in writing, shall be recorded with the County Clerk & Recorder of Weld County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the PROPERTY subject to the amendment unless otherwise specified in the amendment.

- d. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of and be binding upon the parties, their successors in interest, or their legal representatives, including all developers, purchasers and subsequent owners of any lots or parcels within the PROPERTY, and shall constitute covenants running with the land. This Agreement shall be recorded with the County Clerk & Recorder of Weld County, Colorado, at the ANNEXOR's expense.
- e. **Indemnification.** ANNEXOR agrees to indemnify and hold harmless the TOWN and the TOWN's officers, employees, agents, and contractors, from and against all liability, claims, and demands, including attorney's fees and court costs, which arise

out of or are in any manner connected with the annexation of the PROPERTY, or with any other annexation or other action determined necessary or desirable by the TOWN in order to effectuate the annexation of the PROPERTY, or which are in any manner connected with the TOWN's enforcement of this Agreement. The ANNEXOR further agrees to investigate, handle, respond to, and to provide defense for and defend against or at the TOWN's option to pay the attorney's fees for defense counsel of the TOWN's choice for, any such liability, claims, or demands.

- f. **Termination.** If the annexation of the PROPERTY is, for any reason, not completed then this Agreement shall be null and void and of no force and effect whatsoever.
- g. **No Right or Remedy of Disconnection.** No right or remedy of disconnection of the PROPERTY from the TOWN shall accrue from this Agreement, other than provided by applicable state laws. In the event the PROPERTY or any portion thereof is disconnected at the ANNEXOR's request, the Town of Frederick shall have no obligation to serve the disconnected property or portion thereof and this Agreement shall be void and of no further force and effect as to such property or portion thereof.
- h. **Annexation and Zoning Subject to Legislative Discretion.** The ANNEXOR acknowledges that the annexation and subsequent zoning of the PROPERTY are subject to the legislative discretion of the Board of Trustees of the Town of Frederick. No assurances of annexation or zoning have been made or relied upon by the ANNEXOR. In the event that the Town of Frederick Board of Trustees, in the exercise of its legislative discretion, does not take any action with respect to the PROPERTY herein contemplated, then the sole and exclusive remedy for the breach hereof accompanied by the exercise of such discretion shall be the disconnection from the TOWN in accordance with state law, as may be appropriate.
- i. **Legal Discretion in the Case of Challenge.** The Town of Frederick reserves the right to not defend any legal challenge to this annexation, In the event such a challenge occurs prior to any expiration of any statute of limitation, the TOWN may, at its discretion, choose to legally fight the challenge or allow the challenge to proceed without defense. This does not restrict the ANNEXOR from engaging the TOWN's legal representatives in such a defense, at no cost to the TOWN.
- j. **Application of Town Policies.** Upon annexation, all subsequent development of the PROPERTY shall be subject to and bound by the applicable provisions of the TOWN's ordinances, as amended, including public land dedications, provided however, that changes or amendments to the *Frederick Municipal Code*, after the date of this Agreement shall in no way limit or impair TOWN's obligation hereunder, except as specifically set forth in this Agreement.
- k. **Amendments to Governing Ordinances, Resolutions and Policies.** As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any TOWN ordinance, resolution, or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution, or policy, and the parties agree that such amendments or revisions shall be binding upon ANNEXOR.
- l. **Legal Fees.** In the event that either party finds it necessary to retain an attorney in connection with a default by the other as to any of the provisions contained in this

Agreement, the defaulting party shall pay the other's reasonable attorney fees and costs incurred in enforcing the provisions of this Agreement.

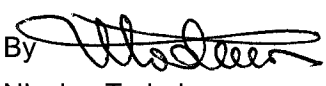
- m. **Reimbursement for Other Costs.** The ANNEXOR shall reimburse the TOWN for any third party costs necessary for the orderly and proper development of the PROPERTY, including but not limited to consultant fees for planning and engineering, and attorney fees for legal services beyond the normal document review, which is directly linked to the PROPERTY.
 - n. **Cooperation.** The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.
 - o. **Timely Submittal of Materials.** The ANNEXOR agrees to provide legal documents, surveys, engineering work, newspaper publication, maps, reports and other documents necessary to accomplish the annexation of the PROPERTY and the other provisions of this Agreement.
 - p. **Compliance with State Law.** The ANNEXOR shall comply with all applicable State law and regulations.
 - q. **Recording of Agreement.** This Agreement shall be recorded in the records of the County Clerk and Recorder, Weld County, Colorado.
 - r. **Choice of Law.** In all litigation arising out of the contract, the statutory and common law of the State of Colorado shall be controlling, and venue shall be in the District Court of Weld County, Colorado.
23. **COMPLETE AGREEMENT.** This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. Except as provided herein there shall be no modifications of this Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein this Agreement may be enforced in any court of competent jurisdiction.
24. **Original Counterparts.** This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.

By this acknowledgment, the undersigned hereby certify that the above Agreement is complete and true and entered into of their own free will and volition.

TOWN OF FREDERICK

ANNEXOR

By
Eric E. Doering, Mayor

By 
Nicolae Toderica

ATTEST:

By

By

Nanette S. Fornof, Town Clerk

By

STATE OF COLORADO)

)ss.

COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____, 2008 by Eric E. Doering as Mayor and Nanette S. Fornof as Town Clerk of the Town of Frederick.

My commission expires:

Witness my hand and official seal.

Notary Public

STATE OF COLORADO)

)ss.

COUNTY OF)

The foregoing instrument was acknowledged before me this 28 day of August, 20 09 by Nicolae Iodorescu Annexor.

My commission expires: 10-18-2010

Witness my hand and official seal.

Sinda Blount

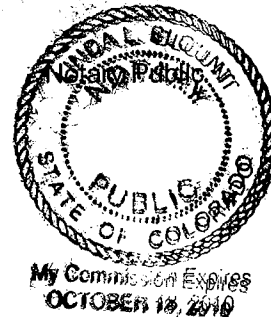


EXHIBIT "A"

Lot 1 Puritan Annexation Legal Description

A parcel of land to be annexed into the Town of Frederick, located in the Southwest Quarter (SW1/4) of Section Thirty-four (34), Township Two North (T.2N.), Range Sixty-Eight West (R.68W.) of the 6th P.M., County of Weld, State of Colorado, being more particularly described as follows:

COMMENCING at the South Quarter Corner of said Section 34 and assuming the South line of the SW1/4 of said Section 34 as bearing South 89°36'20" West, being a grid bearing of the Colorado State Plane Coordinate System, North Zone, North American Datum 1983/92, a distance of 2655.22 feet with all bearings contained herein relative thereto;

THENCE North 00°10'41" West along the East line of the SW1/4 of said Section 34 a distance of 30.00 feet to a line parallel with and 30.00 feet Northerly of, as measured at a right angle to the South line of the SW1/4 of said Section 34;

THENCE South 89°36'20" West along a line parallel with and 30.00 feet Northerly of, as measured at a right angle to the South line of the SW1/4 of said Section 34, said line being coincidental to the North line of the Highway 52 Annexation, recorded February 1, 2007 as Reception No. 3452475 of the Records of Weld County, a distance of: 907.18 feet to the POINT OF BEGINNING, said point being at an intersection of said Highway 52 Annexation and a boundary line of the Wyndham Hill Annexation No. 1, recorded June 7, 2004 as Reception No. 3187002 of the Records of Weld County;

THENCE South 89°36'20" West continuing along a line parallel with and 30.00 feet Northerly of, as measured at a right angle to the South line of the SW1/4 of said Section 34 a distance of 537.47 feet to the Westerly Right of Way line of Puritan Lane;

THENCE North 00°25'24" West along the Westerly Right of Way line of said Puritan Lane a distance of 1113.15 feet to a Southerly boundary line of the Wyndham Hill Annexation No. 1;

THENCE North 89°36'20" East along the Southerly boundary line of said Wyndham Hill Annexation a distance of 40.00 feet to the Easterly Right of Way line of said Puritan Lane;

THENCE South 00°25'24" East along the Easterly Right of Way line of said Puritan Lane a distance of 707.95 feet to the North line of Lot 1 of the Puritan Subdivision, recorded July 1, 1947 as Reception No. 1009475 of the Records of Weld County;

THENCE North 89°35'17" East along the North line of said Lot 1 and the Easterly prolongation thereof a distance of 497.67 feet to an intersection with the boundary line of said Wyndham Hill Annexation No. 1;

THENCE South 00°23'40" East along the boundary line of said Wyndham Hill Annexation No. 1 a distance of 405.35 feet to the North line of said Highway 52 Annexation and to the POINT OF BEGINNING.

Said described parcel of land contains a total of 246,178 sq. ft or 5.651 acres, more or less and is subject to any existing easements and rights of way of record or as now existing on said described parcel of land.

EXHIBIT "B"

Water Rights Appurtenant to Property.

*(Listing of all tributary and non-tributary water rights
attached to the property)*

There are no water rights attached to this property.

EXHIBIT "C"
SPECIAL PROVISIONS APPLYING
TO THE LOT 1, PURITAN ANNEXATION

SPECIAL PROVISIONS APPLYING TO THE LOT 1, PURITAN ANNEXATION. Certain special provisions shall apply to the Lot 1, Puritan Annexation as follows:

A. SPECIAL PROVISION TO SECTION 4, PUBLIC IMPROVEMENTS, PARAGRAPH f:

The ANNEXOR agrees to enter into a Memorandum of Agreement regarding Public Improvements ("MOAPI") pertaining to such improvements and other matters prior to any development of the PROPERTY. The layout and timing of all utilities to the PROPERTY shall be detailed in said MOAPI based on review and requirements of applicable regional and special districts and authorities, which may include but are not limited to Fire, Recreation, NCWCD, St. Vrain Sanitation, and Left Hand Water districts. The construction of public improvements shall be subject to any reimbursement which may be provided for in the MOAPI.

B. SPECIAL PROVISION TO SECTION 4, PUBLIC IMPROVEMENTS, PARAGRAPH f:

The ANNEXOR agrees to pay the full cost for relocating both the underground the existing overhead electric line and eight-foot wide regional trail that are located along the north side of State Highway 52 and fronting the PROPERTY. The ANNEXOR and the TOWN agree that these relocations will be constructed and installed at the same time that the adjacent property Owners/Developers relocated underground their portion of the overhead electric line over the adjacent property, or as may otherwise be determined by the TOWN under separate agreement, phase, development, or project approval.

C. SPECIAL PROVISION TO SECTION 11, TRANSPORTATION FACILITIES, PARAGRAPH b:

ANNEXOR and TOWN shall determine the timing and triggers for roadway and intersection improvements on State Highway 52 and Puritan Lane in the MOAPI associated with improvement of the subject annexed property

